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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,961	08/31/2005	Stephen E Parent	AD136/2001	3763
7590 02/20/2009 CARRITHERS LAW OFFICE, PLLC 6200 DUTCHMAN'S LANE SUITE 206 LOUISVILLE, KY 40205			EXAMINER TAOUSAKIS, ALEXANDER P	
			ART UNIT 3726	PAPER NUMBER
			MAIL DATE 02/20/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/517,961

**Applicant(s)**

PARENT ET AL.

**Examiner**

ALEXANDER P. TAOUSAKIS

**Art Unit**

3726

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 and 23 is/are pending in the application.
- 4a) Of the above claim(s) 1-4 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-11 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date 10/27/2005
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of claims 5-11 in the reply filed on 1/30/2009 is acknowledged. The traversal is on the ground(s) that Groups I and II are linked, and that they should be considered a single entity. This is not found persuasive because Groups I and II are classified in different classes/subclasses, also Group I lacks the limitation of a pull tab exposed for locking engagement with a tool, and Group II lack the limitation of positioning a spiked plate across a split in a log, and combination of the group would require be a serious burden. Group II only discloses a spiked plate and only requires that the plate be capable of being engaged into a log.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 5-6, 8-9 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Agar (5,632,128).**

5. Agar teaches a plate (10) having a pair of oppositely disposed faces (*see Figure 1*) , a plurality of spaced apart spikes (18) projecting from one of said pair of faces (*see Figure 2*) and at least one plate pull tab (30) integral with said plate (10) and of selected length, and that the tabs are capable of being engaged by a tool for locking engagement

*(note that although Agar does not explicitly teach a tool with locking engagement to tabs 30, the claims only require that the tabs be capable of being in a locking engagement, and it is inherent that a tool such as pliers, clamps, vise grips, etc. may be used to lock onto the tab for the purpose of installation, removal, or adjustment).*

6. Agar teaches a spiked plate (10) as defined in claim 5 wherein there are a pair of said pull tabs (30) that are spaced apart from one another longitudinally along said plate (10) *(see Figure 2).*

8. Agar teaches a spiked plate (10) as defined in claim 6 wherein said pair of tabs (30) extend in a direction away from one another whereby terminal free outer ends associated with the respective tabs face in a direction away from one another *(see Figure 1).*

9. Agar teaches a spiked plate (10) as defined in claim 5 including means on each said plate pull tab (30) that projects therefrom in a direction corresponding to that of said spikes and thereby spacing the respective pull tabs a selected distance from the surface of an object impaled by said spikes (18) *(see Figure 1).*

23. Agar teaches a plate (10) for arresting, said plate (10) comprising:  
a strip of material having a pair of oppositely disposed faces; spaced apart spikes (18) projecting from a first face thereof *(see Figure 2);*  
at least one plate (10) pull tab disposed on said a second face opposing said first face and said spaced apart spikes (18) *(see Figure 3);*

said at least one pull tab being of selected length, integral with said plate (10) and capable of being engaged by a tool disposed adjacent a face of said plate (10) opposite said one face (*note that although Agar does not explicitly teach a tool with locking engagement to tabs 30, the claims only require that the tabs be capable of being in a locking engagement, and it is inherent that a tool such as pliers, clamps, vise grips, etc. may be used to lock onto the tab for the purpose of installation, removal, or adjustment*). Note that the preamble is not accorded patentable weight because the body of the claim does not depend on the preamble for completeness, but the structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

**Claims 5-7, 9-11 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Cox et al (5,435,111).**

5. Cox et al teach a plate (10) having a pair of oppositely disposed faces (*see Figure 1*) , a plurality of spaced apart spikes (12) projecting from one of said pair of faces (*see Figure 2*) and at least one plate pull tab (14a, 14b) integral with said plate (10) and of selected length, and that the tabs are capable of being engaged by a tool for locking engagement (*note that although Agar does not explicitly teach a tool with locking engagement to tabs 14a, 14b, the claims only require that the tabs be capable of being in a locking engagement, and it is inherent that a tool such as pliers, clamps, vise grips, pry bar, framing hammer, etc. may be used to lock onto the tab for the purpose of installation, removal, or adjustment*).

6. Cox et al teach a spiked plate (10) as defined in claim 5 wherein there are a pair of said pull tabs (14a, 14b) that are spaced apart from one another longitudinally along said plate (10) (*see Figure 1*).

7. Cox et al teaches a spiked plate (1) as defined in claim 6 wherein said pair of tabs (14a, 14b) extend in a direction toward one another whereby free terminal outer ends associated with the respective tabs face one another (*see Figure 2*).

9. Cox et al teach a spiked plate (10) as defined in claim 5 including means on each said plate pull tab (14a, 14b) that projects therefrom in a direction corresponding to that of said spikes and thereby spacing the respective pull tabs a selected distance from the surface of an object impaled by said spikes (18) (*see Figure 1*).

10. Cox et al teach a spiked plate (10) as defined in claim 6 wherein said pull tabs (14a, 14b) are located in respective ones of a pair of space apart open windows in said plate (10) (*see Figure 2*).

11. Cox et al teach a spiked plate (10) as defined in claim 10 wherein said pull tabs and plate (10) are coplanar and said pull tabs project into the window associated therewith (*see Figures 2 and 5*).

23. Cox et al teach teaches a plate (10) for arresting, said plate (10) comprising:  
a strip of material having a pair of oppositely disposed faces; spaced apart spikes (14a, 14b) projecting from a first face thereof (*see Figure 1*);  
at least one plate (10) pull tab disposed on said a second face opposing said first face

and said spaced apart spikes (18) (*see Figure 2*);  
said at least one pull tab being of selected length, integral with said plate (10) and capable of being engaged by a tool disposed adjacent a face of said plate (10) opposite said one face (*note that although Agar does not explicitly teach a tool with locking engagement to tabs 14a, 14b, the claims only require that the tabs be capable of being in a locking engagement, and it is inherent that a tool such as pliers, clamps, vise grips, etc. may be used to lock onto the tab for the purpose of installation, removal, or adjustment*). Note that the preamble is not accorded patentable weight because the body of the claim does not depend on the preamble for completeness, but the structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALEXANDER P. TAOUSAKIS whose telephone number is (571)272-3497. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bryant can be reached on (571) 272-4526. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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